

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	
)	
CIRCUIT CITY STORES, INC., et al.,)	Case No. 08-35653-KRH
)	Chapter 11
Debtors.)	(Jointly Administered)

**RESPONSE TO THE LIQUIDATING TRUST'S THIRTY-FIRST OMNIBUS
OBJECTION TO CLAIMS INCLUDING THE CLAIM OF
TXU ENERGY RETAIL COMPANY, LLC**

TXU Energy Retail Company LLC ("**TXU Energy**"), by counsel, files this response (the "**Response**") to the Thirty-First Omnibus Objection to Claims (Disallowance of Certain Invalid Claims) (the "**Objection**") filed on behalf of the Circuit City Stores, Inc. Liquidating Trust (the "**Liquidating Trust**") through Alfred H. Siegel, as Trustee of the Trust (the "**Trustee**"), and in support thereof respectfully states the following:

SUMMARY OF RESPONSE

TXU Energy submits that its Proof of Claim (Claim Number 4518) is valid and remains unpaid and that the Trustee's stated basis for objection to the claim lack merit because, *inter alia*, TXU Energy does not hold any "pending deposits and or post petition overpayments" on any of the accounts that were in the name of Circuit City Stores, Inc., et al. (the "**Debtors**"), and

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because the claim is valid and remains unpaid. Accordingly, TXU Energy's claim should be allowed in full in the amount of \$45,488.08 as a general unsecured claim.

RESPONSE TO CLAIM OBJECTION

As set forth in the Declaration of Don Wells (the "*Wells Declaration*") attached hereto as **Exhibit 1**, TXU Energy filed its proof of claim on January 20, 2009 in the amount of \$45,488.08 (the "*Claim*" or "*Proof of Claim*"), which was the amount remaining due for electric power and energy provided by TXU Energy to the Debtors at the stated locations within the State of Texas. A true and correct copy of TXU Energy's Proof of Claim is attached to the Wells Declaration as Exhibit "A." Upon TXU Energy's receipt of notice regarding the Debtor's commencement of these bankruptcy proceedings, TXU Energy created a post-petition account for the Debtors and no payment was applied to the Debtor's pre-petition account subsequent to the November 10, 2008 Petition date.¹ The full pre-petition debt of \$45,488.08 set forth in TXU Energy's Proof of Claim remains unpaid to TXU Energy and the charges reflect therein for pre-petition electric service are accurate, adequately supported by documentation, sufficiently detailed and are not overstated.²

Attached to the Wells Declaration as Exhibit "B" is a true and correct copy of TXU Energy's Post-Petition Statement of Account for the Debtors.³ TXU Energy issued its final bill on the Debtors' post-petition account on July 19, 2009, reflecting an unpaid accrued balance of \$11,958.58.⁴ After applying all lawful credits and offsets, the Debtors had a closing post-petition balance due to TXU Energy in the amount of \$5,508.71 for post-petition electric service, which

¹ See the Wells Declaration at ¶ 4.

² *Id.* at ¶¶ 4 and 6.

³ *Id.* at ¶ 6.

⁴ *Id.*

amount also remains unpaid.⁵ TXU Energy is not holding any deposits, pending or otherwise, from or attributable to the Debtors and, as confirmed by the attached Wells Declaration, there are no remaining overpayments on the Debtors' accounts with TXU Energy.

WHEREFORE, TXU Energy requests that the Court enter an order overruling the Liquidating Trust's Objection as it applies to TXU Energy's Proof of Claim and granting TXU Energy such other relief as is just and equitable under the circumstances.

Respectfully submitted,

/s/ Robert S. Westermann
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⁵ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2012, a true and correct copy of the foregoing Response (including all Exhibit(s)) was served using the Court's ECF system, which thereby caused the Response to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter; I further certify that a copy of the foregoing Response has been served upon the parties below by facsimile and/or electronic mail.

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